IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.453 OF 1998

K. & Co. Limited...Petitioners

Vs.

Nielcon Limtied.....Respondent

Mr.Shiralkar i/b. Shiralkar & Co., for the Petitioners.
None for the Respondents.

CORAM: A.M. Khanwilkar,J.
DATE : 4th August, 2005

P.C.:

1. Heard Counsel for the petitioners. None appears for the Respondents, though served. No reply is filed opposing this petition.

2. According to the petitioners the respondent company is liable to pay the amount arising from 9 bills of exchange which were in the aggregate of a sum of Rs.64,85,000/-. The respondent company, however, made part payment in two instalments in a sum of Rs.11,50,000/-. In so far as the outstanding amount of Rs.53,35,000/- is concerned the liability to pay the said amount is acknowledged by the respondent company in the communication sent on 30th May, 1996, Exhibit "E". In this communication the explanation offered for the delayed payment is that unfavourable business situation. However, assurance is given by the respondent company that the outstanding amount will be paid in instalment of Rs.5.00 lakhs every 10 days starting from 10th July, 1996. As per the said assurance one cheque in the sum of Rs.5.00 lakhs was offered to the petitioners, which however was dishonoured and returned to the petitioners. As no payment was forthcoming the petitioners eventually gave statutory notice on 15th June, 1997. Reply was given to the statutory notice. However, no payment was offered by the respondent

company though the respondents demanded a sum of Rs.53,35,000/- which was due and payable on the date of issuance of statutory notice with interest accrued thereon. The petitioners eventually filed the present petition under Sections 433 and 434 of the Companies Act on 30th April, 1998. This Court admitted the petition on 2nd December, 1998 after hearing Counsel for the Respondent company with the prima facie finding that the company is unable to discharge its current liability which exceeds Rs.88.00 lakhs. The petition has been duly advertised. None appears for the respondent company nor any reply affidavit has been filed. In that sense the assertions made in the petition have remained uncontroverted. As mentioned earlier, no reply was given to the statutory notice nor any payment was offered to the petitioners as was demanded under the statutory notice. Under the circumstances legal presumption arising against the respondent company that it is unable to pay its debts has remained uncontroverted. If it is so, the only course open to this Court is to allow the petition in terms of prayer clauses (a) and (b) as the respondent company is unable to discharge its current liability. Ordered accordingly.

(A.M. KHANWILKAR, J.)